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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Michele R. Gray,

10 Plaintiff,

11 v.

12 CTP Funding,

13 Defendant.
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No. CV-23-00663-PHX-ESW

ORDER

15
16 The Court has reviewed Defendant's "Motion for Order to Show Cause Why
17 Plaintiff Should Not be Declared a Vexatious Litigant and Subject to Pre-Filing
18 Requirements" (Doc. 32). Defendant asserts that the Court "should enter an Order to Show
19 [Cause] directing Plaintiff Michele Gray to appear before the Court and show cause why
20 the Court should not declare her a vexatious litigant and impose the pre-filing requirements
21 proposed herein." (*Id.* at 8). Defendant argues that due to Plaintiff's indigency, any
22 economic sanctions are "likely to be uncollectible, and an ineffective deterrent." (*Id.* at 7).
23 Defendant therefore requests entry of a pre-filing injunction against Plaintiff that precludes
24 future actions filed by Plaintiff against Defendant or those closely affiliated with
25 Defendant. (*Id.* at 8). Plaintiff has not responded to the Motion (Doc. 32) and the time to
26 do so has passed.

27 "The All Writs Act, 28 U.S.C. § 1651(a), provides district courts with the inherent
28 power to enter pre-filing orders against vexatious litigants." *Molski v. Evergreen Dynasty*

1 *Corp.*, 500 F.3d 1047, 1057 (9th Cir. 2007). “[P]re-filing orders are an extreme remedy
2 that should rarely be used.” *Id.*

3 “To determine whether the litigation is frivolous, district courts must look at both
4 the number and content of the filings as indicia of the frivolousness of the litigant’s claims.”
5 *Ringgold-Lockhart v. Cnty. of Los Angeles*, 761 F.3d 1057, 1064 (9th Cir. 2014) (internal
6 quotations and citation omitted). “[E]ven if [a litigant’s] petition is frivolous, the court
7 [must] make a finding that the number of complaints was inordinate.” *Id.* (alteration in
8 original) (quoting *De Long v. Hennessey*, 912 F.2d 1144, 1148 (9th Cir. 1990)). “As an
9 alternative to frivolousness, the district court may make an alternative finding that the
10 litigant’s filings ‘show a pattern of harassment.’” *Id.*

11 As explained by the Ninth Circuit,

12 When district courts seek to impose pre-filing restrictions, they
13 must: (1) give litigants notice and “an opportunity to oppose
14 the order before it [is] entered”; (2) compile an adequate record
15 for appellate review, including “a listing of all the cases and
16 motions that led the district court to conclude that a vexatious
litigant order was needed”; (3) make substantive findings of
frivolousness or harassment; and (4) tailor the order narrowly
so as “to closely fit the specific vice encountered.”

17 *Id.* at 1062 (alteration in original) (quoting *De Long*, 912 F.2d at 1147-48).

18 “The first factor simply requires that the litigant be given an opportunity to oppose
19 the order before it is entered. . . . It does not require an in-person hearing.” *Gavin v. City*
20 *& Cnty. of San Francisco*, No. 15-CV-05202-EMC, 2016 WL 126937, at *2 (N.D. Cal.
21 Jan. 12, 2016) (finding that “the first *De Long* factor is met because the Court issued an
22 Order to Show Cause, and Plaintiff had an opportunity to file a written opposition”);
23 *Strojnuk v. Driftwood Hosp. Mgmt. LLC*, No. CV-20-00343-PHX-DJH, 2021 WL 50456,
24 at *7 (D. Ariz. Jan. 6, 2021) (explaining that the “first step requires that the accused party
25 have ‘an opportunity to oppose the entry of the order’” and “does not require a hearing”)
26 (citing *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047, 1058-59 (9th Cir. 2007); Fed.
27 R. Civ. P. 78(b); LRCiv 7.2(f)); *Tripathi v. Beaman*, 878 F.2d 351, 354 (10th Cir. 1989)
28 (“The notice and opportunity requirement does not, however, require an in-person hearing

1 in the district court.”).

2 The Ninth Circuit has described the third and fourth factors as the “two substantive
3 factors” and has explained that the following is a “helpful framework” in determining
4 whether a party is a vexatious litigant:

5 (1) the litigant’s history of litigation and in particular whether
6 it entailed vexatious, harassing or duplicative lawsuits; (2) the
7 litigant’s motive in pursuing the litigation, e.g., does the
8 litigant have an objective good faith expectation of prevailing?;
9 (3) whether the litigant is represented by counsel; (4) whether
10 the litigant has caused needless expense to other parties or has
posed an unnecessary burden on the courts and their personnel;
and (5) whether other sanctions would be adequate to protect
the courts and other parties.

11 *Ringgold-Lockhart*, 761 F.3d at 1062 (quoting *Molski*, 500 F.3d at 1058). “Finally, courts
12 should consider whether other, less restrictive options, are adequate to protect the court and
13 parties.” *Id.* at 1064-65 (holding that the district court abused its discretion by failing to
14 consider whether “imposing sanctions such as costs or fees on the [plaintiffs] would have
15 been an adequate deterrent”).

16 In considering Defendant’s Motion (Doc. 32), the Court heeds the Ninth Circuit’s
17 instruction that courts “should not enter pre-filing orders with undue haste because such
18 sanctions can tread on a litigant’s due process right of access to the courts.” *Molski*, 500
19 F.3d at 1057. “[I]n light of the seriousness of restricting litigants’ access to the courts, pre-
20 filing orders should be a remedy of last resort.” *Ringgold-Lockhart*, 761 F.3d at 1062.
21 “And, particular caution should be exercised before using such measures against a pro se
22 plaintiff.” *Harris v. Dillinger*, No. CV-17-00498-TUC-DCB, 2017 WL 6819931, at *2 (D.
23 Ariz. Nov. 9, 2017) (citing *Pavilions v. King*, 626 F.2d 1075, 1079 (1st Cir. 1980)).

24 The Court does not find that Plaintiff’s case filings constitute an “inordinate”
25 quantity or demonstrate “an intent to harass the defendant or the court” such that the Court
26 must impose the remedy of last resort by imposing a pre-filing injunction on Plaintiff.
27 *Ringgold-Lockhart*, 761 F.3d at 1064 (quoting *De Long*, 912 F.3d at 1148); *see, e.g., Banga*
28 *v. Ameriprise Auto & Home Ins. Agency*, No. 2:18-CV-1072 MCE AC, 2021 WL 535378,

1 at *2 (E.D. Cal. Feb. 12, 2021) (denying request for pre-filing injunction where the plaintiff
 2 filed six prior cases); *Aguilar v. Applied Underwriters, Inc.*, No. 20-CV-00111, 2020 WL
 3 4923629, at *6 (E.D. Cal. Aug. 21, 2020) (concluding that three case filings “do not rise to
 4 the inordinate quantity typically exhibited by vexatious litigants”); *compare Wood v. Santa*
 5 *Barbara Chamber of Commerce, Inc.*, 705 F.2d 1515, 1523, 1526 (9th Cir. 1983) (thirty-
 6 five actions filed in 30 jurisdictions warranted a vexatious litigant order); *Favor v. Harper*,
 7 No. CV 17-0165-JGB (JEM), 2017 WL 132830, at *2 (C.D. Cal. Jan. 13, 2017) (“Favor
 8 has filed at least 50 actions in this district since 2014, and he continues to file new habeas
 9 petitions and civil rights complaints on a regular basis.”), *Molski*, 500 F.3d at 1050
 10 (vexatious plaintiff filed approximately 400 lawsuits in the federal courts within the
 11 districts in California); *Reddy v. MedQuist, Inc.*, No. cv 12-01324 PSG, 2012 WL 6020010,
 12 at *6 (N.D. Cal. Dec. 3, 2012) (“[Plaintiff] has literally filed tens of lawsuits against
 13 hundreds of defendants”); *Bobo v. Plymouth Hous. Grp.*, No. 6:14-cv-01071-AA, 2014
 14 WL 6085858, at *2 (D. Or. Nov. 7, 2014) (vexatious plaintiff “filed at least forty pro se
 15 complaints”).

16 The Court will deny Defendant’s Motion (Doc. 32). However, to reiterate the
 17 Court’s July 2022 Order filed in Plaintiff’s prior District of Arizona case, Plaintiff should
 18 “not take this Court’s [denial of Defendant’s Motion] as a sign that the Court believes she
 19 has acted appropriately in this litigation.” *Gray v. Capstone Fin.*, No. CV-21-01333-PHX-
 20 JJT, 2022 WL 2985647, at *8 (D. Ariz. July 28, 2022) (“As the Ninth Circuit
 21 acknowledged in *Ringgold-Lockhart*, ‘[a]t some point, a federal pre-filing injunction may
 22 well be needed to protect judicial resources and the defendants from litigation related to
 23 this case,’ and the Court cautions Plaintiff that the same could be true on the facts at
 24 hand.”).¹

25 Accordingly,

26 **IT IS ORDERED** denying Defendant’s “Motion for Order to Show Cause Why
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28 ¹ A copy of the Order is attached to Defendant’s Notice of Removal. (Doc. 1-1).

1 Plaintiff Should Not be Declared a Vexatious Litigant and Subject to Pre-Filing
2 Requirements” (Doc. 32).

3 Dated this 9th day of June, 2023.

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6 Honorable Eileen S. Willett
7 United States Magistrate Judge
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